

Editor's note: Appealed – dismissed, Civ. No. 74-1146 (D.Mont. June 29, 1975)

DUNCAN MILLER

IBLA 74-191

Decided June 26, 1974

Appeal from a decision of the Montana State Office, Bureau of Land Management, denying appellant's petition for reinstatement of oil and gas lease M-19961, terminated for failure to pay timely the annual rental required by the lease terms.

Affirmed.

Oil and Gas Leases: Reinstatement

It is proper to deny a petition for reinstatement of an oil and gas lease terminated for failure to pay rental as required by § 31 of the Mineral Leasing Act of 1920, as amended, 30 U.S.C. § 188 (1970), where the petitioner has not shown that his failure to pay the rental on or before the anniversary date of the lease was justifiable or not due to lack of reasonable diligence.

APPEARANCES: Duncan Miller, pro se.

OPINION BY ADMINISTRATIVE JUDGE RITVO

Duncan Miller has appealed from a decision of the Montana State Office, Bureau of Land Management, dated December 27, 1973, denying his petition for reinstatement of oil and gas lease M-19961. The subject lease terminated automatically upon failure to pay the annual rental on or before the due date, as required by 30 U.S.C. § 188(b) (1970). The relevant portion of the statute provides that:

* * * upon failure of a lessee to pay rental on or before the anniversary date of the lease, for any lease on which there is no well capable of producing oil or gas in paying quantities, the lease shall automatically terminate by operation of law.

Payment was due on December 3, 1973. 1/ The rental check was mailed by appellant on December 2, 1973. 2/ The payment was received by the State Office on December 4, 1973. Under certain circumstances reinstatement of a terminated lease is possible. The lessee must show that his failure to pay on or before the anniversary date the full amount of rental due "was either justifiable or not due to a lack of reasonable diligence * * *." 30 U.S.C. § 188(c) (1970). In Louis Samuel, 8 IBLA 268 (1972), the Department adhered to the general rule found in 43 CFR 3108.2-1(c)(2) that "reasonable diligence" is established if the lessee can prove that he mailed the payment in sufficient time so that in the normal course of events it would be received on or prior to the due date. Thus, as several of the cases in Samuel held, appellant did not show reasonable diligence since the payment was mailed at best, one day before the due date.

On appeal, Mr. Miller argues that the delayed payment was caused by his misplacement of business records. Following this misplacement, appellant requested information from the State Office regarding lease rentals that had not been paid and which were due in December. The State Office responded by letter that upon receipt of the serial numbers of appellant's leases, it would inform him whether rental had or had not been paid. Appellant argues that the State Office could have expedited matters by ascertaining the serial numbers of his leases on its own. This argument lacks merit as the State Office is not responsible for keeping appellant's business records in order for him. 3/ Appellant's argument simply points to the fact that the delayed rental payment was caused by appellant's own negligence or inadvertance, neither of which constitutes justifiable delay. Louis Samuel, *supra* at 274.

Appellant has failed to show that the delay in payment of the annual rental was either justifiable or not due to a lack of reasonable diligence on his part. Accordingly, his request for reinstatement was properly denied.

1/ Although the anniversary date of the lease was December 1, that day fell on a Saturday, a day in which the State Office is closed. Therefore the rental was payable on the next business day, December 3. 43 CFR 3108.2-1(a).

2/ The postmark on the envelope in which the rental payment was mailed reads "PM 2 DEC 1973."

3/ In any case, the State Office did in fact send appellant a courtesy notice informing him that payment on lease M-19961 was due on December 1, 1973.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision below is affirmed.

Martin Ritvo
Administrative Judge

We concur.

Joan B. Thompson
Administrative Judge

Frederick Fishman
Administrative Judge

